

Hearing Date: TBD  
Objection Deadline: October 28, 2020

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.<sup>1</sup>

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In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE EMPLOYEES RETIREMENT SYSTEM OF THE  
GOVERNMENT OF THE COMMONWEALTH OF  
PUERTO RICO,

Debtor.

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THE SPECIAL CLAIMS COMMITTEE OF THE  
FINANCIAL OVERSIGHT AND MANAGEMENT

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) PROMESA  
) Title III  
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) Case No. 17-BK-03283 (LTS)  
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)  
) PROMESA  
) Title III  
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) Case No. 17-BK-03566 (LTS)  
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)  
) Adv. Proc. No. 19-00356 (LTS)  
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<sup>1</sup> The Debtors in these Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK- 4780) (Last Four Digits of Federal Tax ID: 3747).

BOARD FOR PUERTO RICO, ACTING BY AND  
THROUGH ITS MEMBERS,

and

THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF ALL TITLE III DEBTORS  
(OTHER THAN COFINA),

as co-trustees of

THE EMPLOYEES RETIREMENT SYSTEM OF THE  
GOVERNMENT OF PUERTO RICO,

Plaintiff,

v.

DEFENDANT 1M, *et al.*,

Defendants.

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THE SPECIAL CLAIMS COMMITTEE OF THE  
FINANCIAL OVERSIGHT AND MANAGEMENT  
BOARD FOR PUERTO RICO, ACTING BY AND  
THROUGH ITS MEMBERS,

and

THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF ALL TITLE III DEBTORS  
(OTHER THAN COFINA),

as co-trustees of

THE EMPLOYEES RETIREMENT SYSTEM OF THE  
GOVERNMENT OF PUERTO RICO,

Plaintiff,

v.

STOEVEER GLASS & CO., *et al.*,

Adv. Proc. No. 19-00357 (LTS)

Defendant.

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THE SPECIAL CLAIMS COMMITTEE OF THE  
FINANCIAL OVERSIGHT AND MANAGEMENT  
BOARD FOR PUERTO RICO, ACTING BY AND  
THROUGH ITS MEMBERS,

and

THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF ALL TITLE III DEBTORS  
(OTHER THAN COFINA),

as co-trustees of

THE EMPLOYEES RETIREMENT SYSTEM OF THE  
GOVERNMENT OF PUERTO RICO,

Plaintiff,

v.

DEFENDANT 1H-78H,

Defendants.

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THE SPECIAL CLAIMS COMMITTEE OF THE  
FINANCIAL OVERSIGHT AND MANAGEMENT  
BOARD FOR PUERTO RICO, ACTING BY AND  
THROUGH ITS MEMBERS,

and

THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF ALL TITLE III DEBTORS  
(OTHER THAN COFINA),

as co-trustees of

Adv. Proc. No. 19-00359 (LTS)

Adv. Proc. No. 19-00361 (LTS)

THE EMPLOYEES RETIREMENT SYSTEM OF THE )  
GOVERNMENT OF PUERTO RICO, )

Plaintiff, )

v. )

DEFENDANT 1G-50G, *et al.*, )

Defendants. )

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**ERS BONDHOLDERS' MOTION FOR PARTIAL SUMMARY JUDGMENT**  
**ON *ULTRA VIRES* ISSUES AND PROCEEDINGS**

To the Honorable United States District Court Judge Laura Taylor Swain:

Pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure, Rule 56 of the Federal Rules of Civil Procedure, and the Court's October 24, 2019 Order, ECF No. 8962 in Case No. 17-bk-03283 as amended most recently on August 25, 2020, ECF No. 14095 in Case No. 17-bk-03283, the ERS Bondholders<sup>2</sup> hereby move for partial summary judgment against the Committees and Government Parties (as defined below) with respect to:

1. Those portions of claim objections by the Unsecured Creditors Committee (the "Creditors' Committee"), ECF No. 5580 in Case No. 17-bk-03283, and the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the "Retiree Committee" and, together with the UCC, the "Committees"), ECF No. 6482 in Case No. 17-bk-03283, contending that the ERS Bonds are invalid and unenforceable because ERS lacked statutory authority to issue them, together with the joinder of the Financial Oversight and Management Board (the "Oversight Board," and, together with the Creditors Committee and the Retiree Committee, the "Committees and Government Parties") in those claim objections, *see* ECF No. 757 in Case No. 17-bk-03566, ¶ 11 (collectively, the "Claim Objections"); and

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<sup>2</sup> Altair Global Credit Opportunities Fund (A), LLC, Andalusian Global Designated Activity Company, Crown Managed Accounts for and on behalf of Crown/PW SP, Glendon Opportunities Fund, L.P., LMA SPC for and on behalf of Map 98 Segregated Portfolio, Mason Capital Master Fund LP, Oaktree-Forrest Multi-Strategy, LLC (Series B), Oaktree Opportunities Fund IX, L.P., Oaktree Opportunities Fund IX (Parallel), L.P., Oaktree Opportunities Fund IX (Parallel 2), L.P., Oaktree Huntington Investment Fund II, L.P., Oaktree Opportunities Fund X, L.P., Oaktree Opportunities Fund X (Parallel), L.P., Oaktree Opportunities Fund X (Parallel 2), L.P., Oaktree Value Opportunities Fund Holdings, L.P., Oceana Master Fund Ltd., Ocher Rose, L.L.C., Pentwater Merger Arbitrage Master Fund Ltd., Puerto Rico AAA Portfolio Bond Fund, Inc.; Puerto Rico AAA Portfolio Bond Fund II, Inc., Puerto Rico AAA Portfolio Target Maturity Fund, Inc.; Puerto Rico Fixed Income Fund, Inc.; Puerto Rico Fixed Income Fund II, Inc.; Puerto Rico Fixed Income Fund III, Inc.; Puerto Rico Fixed Income Fund IV, Inc.; Puerto Rico Fixed Income Fund V, Inc.; Puerto Rico Fixed Income Fund VI, Inc.; Puerto Rico GNMA & U.S. Government Target Maturity Fund, Inc.; Puerto Rico Mortgage-Backed & U.S. Government Securities Fund, Inc.; PWCM Master Fund Ltd., Redwood Master Fund, Ltd, S.V. Credit, L.P., Tax-Free Puerto Rico Fund, Inc.; Tax-Free Puerto Rico Fund II, Inc.; Tax-Free Puerto Rico Target Maturity Fund, Inc.; and UBS IRA Select Growth & Income Puerto Rico Fund.

2. Count I and Counterclaim Counts I to IV of adversary proceedings captioned 19-ap-356, 19-ap-357, 19-ap-359, and 19-ap-361 (collectively, the “Clawback Actions”).

In support of this Motion, the ERS Bondholders offer:

1. A memorandum of law attached hereto as Exhibit A;
2. A proposed form of order attached hereto as Exhibit B;
3. The ERS Bondholders’ Rule 56(b) Statement of Undisputed Facts in Support of Partial Motion for Summary Judgment on *Ultra Vires* Issues and Proceedings;
4. The Declaration of Sparkle L. Sooknanan in Support of ERS Bondholders’ Motion for Partial Summary Judgment on *Ultra Vires* Issues and Proceeds, dated September 11, 2020, and the exhibits thereto;
5. The Declaration of Dr. Laura Gonzalez dated September 9, 2020, and the exhibit thereto; and
6. The Declaration of Dr. W. Bartley Hildreth dated September 9, 2020, and the exhibits thereto.

### **RELIEF REQUESTED**

For the reasons given in the attached memorandum in support, the Court should grant summary judgment to the ERS Bondholders on the above claims and issues in the Claim Objections and the Clawback Actions, substantially in the form of the proposed order attached hereto as Exhibit B.

### **NOTICE**

Pursuant to the Court’s August 25, 2020 Order, ECF No. 14095 in Case No. 17-bk-03283, joinders in this motion by Participants in the Clawback Actions are due on September 18, 2020. and oppositions to this motion are due on October 28, 2020. Any party against whom this paper

has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the clerk's office of the United States Bankruptcy Court for the District of Puerto Rico by October 28, 2020. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the court, the interest of justice requires otherwise.

### **CONCLUSION**

WHEREFORE, for the reasons herein and presented more fully in the accompanying memorandum, the ERS Bondholders respectfully request that the Court enter an order, substantially in the form attached as Exhibit B, granting the relief requested and such further relief as the Court deems appropriate.

In San Juan, Puerto Rico, today Friday September 11, 2020.

/s/Alfredo Fernández-Martínez

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